

**RULE 17.1, PLEAS OF GUILTY AND NO CONTEST — Trial court must advise defendant of his rights, direct consequences of plea, and "special conditions of sentencing" for plea to be made voluntarily and intelligently — Revised 10/2009**

Rule 17.1(b), Ariz. R. Crim. P., provides, "A plea of guilty or no contest may be accepted only if voluntarily and intelligently made." Rules 17.2, 17.3, and 17.4, Ariz. R. Crim. P., require the trial court to follow certain procedures in accepting a guilty plea or plea of no contest so that the defendant's constitutional rights are preserved:

Both state and federal law require that the trial court, before accepting a guilty plea, determine that the defendant understands (1) the nature of the charges, (2) the nature and range of possible sentences, including any special conditions, (3) the constitutional rights waived by pleading guilty, (4) the right to plead not guilty, and (5) that the right to appeal is also waived if the defendant is not sentenced to death. Ariz. R. Crim. P. 17.2; *Boykin* [*v. Alabama*], 395 U.S. [238] at 243, 89 S.Ct. 1709 [at 1712, 23 L.Ed.2d 274 (1969)]; *State v. Barnes*, 167 Ariz. 186, 189, 805 P.2d 1007, 1010 (1991); *State v. Djerf*, 191 Ariz. 583, 594 ¶ 36, 959 P.2d 1274, 1285 ¶ 36 (1998). Furthermore, Rule 17.6 requires that defendant be advised of his constitutional trial rights before the trial court can accept an admission of prior convictions. *State v. Medrano-Barraza*, 190 Ariz. 472, 474, 949 P.2d 561, 563 (App. 1997).

However, Rule 17.2, Ariz. R. Crim. P., "does not require that a trial court inform a defendant of every conceivable consequence or collateral effect of a conviction prior to accepting a guilty plea." *State v. Hatch*, 156 Ariz. 597, 599, 754 P.2d 324, 326 (App. 1988). "A voluntary plea is one made 'with sufficient awareness of the *relevant* circumstances and *likely* consequences.' *State v. Crowder*, 155 Ariz. 477, 480, 747

P.2d 1176, 1179 (1987) [emphasis in original] (*quoting Brady v. United States*, 397 U.S. 742, 748, 90 S.Ct. 1463, 25 L.Ed.2d 747(1970))." *State v. Jenkins*, 193 Ariz. 115, 120 ¶ 17, 970 P.2d 947, 952 ¶ 17 (App. 1998). To determine if a defendant must be advised of a particular consequence before he pleads guilty, courts perform a two-step analysis:

"(1) whether the consequence of the guilty plea is direct or collateral; and if the consequence is direct, (2) whether the condition of sentencing is special or general. If the consequence is either collateral to the guilty plea or direct but results from a general condition, the judge is not required to give the defendant notice."

*Appeal in Yuma County Juvenile Action No. J-95-63*, 183 Ariz. 228, 230-31, 902 P.2d 834, 836-37 (App. 1995). "The distinguishing feature of a collateral consequence is that it is contingent upon some future event which is unascertainable at the time of sentencing." *Id.* at 231, 902 P.2d at 837. *See also Martin v. Reinstein*, 195 Ariz. 293, 319, 987 P.2d 779, 805 (App. 1999), *quoting Yuma County Juvenile Action No. J-95-63, supra.*

The Arizona courts have held that the possibility of commitment as a sexually violent predator is a collateral consequence of a guilty plea to a sexual offense, because under A.R.S. § 36-3707 "Civil commitment will occur only if the state demonstrates beyond a reasonable doubt that a Petitioner currently suffers from a mental disorder that makes it likely that he will engage in acts of sexual violence." *Martin v. Reinstein*, 195 Ariz. 293, 319, 987 P.2d 779, 805 (App. 1999).

In *Appeal in Yuma County Juvenile Action No. J-95-63*, 183 Ariz. 228, 231, 902 P.2d 834, 837 (App. 1995), the juvenile court did not have to advise a juvenile of a direct consequence because it was not a "special condition of sentencing." A juvenile admitted committing burglary in the second degree, and pursuant to A.R.S. §§

13-904(H) and 13-912.01(C), the juvenile court ordered that the juvenile could not own or possess a firearm until he was 30 years old.<sup>1</sup> The juvenile moved to withdraw from his plea agreement, arguing that his plea was involuntary because he was not informed of this condition before entering his plea, and contending that he would not have admitted the delinquent offense if he had known that he would be prohibited from having guns. The Court of Appeals held that the restrictions on the juvenile's having guns were direct consequences of his admission. However, the restriction was a general consequence for any juvenile found delinquent of certain offenses, not a "special condition of sentencing." Therefore, the juvenile court did not have to advise the juvenile of that consequence before taking the juvenile's admission and the juvenile was not entitled to withdraw from his plea. *Id.* at 230, 901 P.2d at 836.

The possibility of deportation for a convicted defendant was held to be a collateral consequence of a guilty plea in *State v. Vera*, 159 Ariz. 237, 238, 766 P.2d 110, 111 (App. 1988). The defendant argued that his plea was involuntary because he was not aware of all of the consequences of pleading guilty, including that it would affect his chances of becoming a United States citizen. The Court of Appeals reasoned that because the trial court has no control over whether defendants are deported, the possibility of deportation was a collateral consequence of a guilty plea so that the trial court did not have to advise the defendant of that possibility.

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<sup>1</sup> A.R.S. subsection 13-904(H) provides: A person who is adjudicated delinquent under § 8-341 does not have the right to carry or possess a gun or firearm. A.R.S. subsection 13-912.01(C) provides in part: If the person's adjudication was for . . . burglary in the second degree . . . , the person may not file for the restoration of his right to possess or carry a gun or firearm until the person attains thirty years of age.

In *State v. Hatch*, 156 Ariz. 597, 599, 754 P.2d 324, 326 (App. 1988), the defendant claimed his plea was involuntary because the trial court did not inform him that his convictions could be used to enhance punishment for any future conviction. The Court of Appeals rejected this argument, reasoning that "the enhanced sentence would only apply if the defendant was convicted of a future offense." *Id.* Furthermore, suspension of a defendant's driver's license "is a collateral, not a direct, consequence" of a guilty plea to reckless driving. *State v. City Court of City of Tucson*, 131 Ariz. 256, 258, 640 P.2d 187, 189 (App. 1981).

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